

LFC Requester:**Theresa Rogers**

**AGENCY BILL ANALYSIS
2016 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original x **Amendment**
Correction **Substitute**

Date 01/13/16

Bill No: HB60

Sponsor: Rep. Paul Pacheco

Agency Code: 305

Short Suspension or Deferral of

Person Writing Yvonne M. Chicoine

Title: Felony Sentences

Phone: 505/827-6928 **Email** ychicoine@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: Relates to HB46 and HB56, which also propose revisions to the sentencing statutes.
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Letter. This is a staff analysis in response to an agency's, committee's, or legislator's request.

Synopsis:

Section 1 of HB60 proposes to amend NMSA 1978, Section 31-20-3 to add a new section B, prohibiting a sentencing court from suspending or deferring more than fifteen percent of the basic sentence of imprisonment, as prescribed in NMSA 1978, Section 31-18-15, for those crimes defined as serious violent offenses in NMSA 1978, Section 33-2-34.

Section 2 of HB60 proposes to amend NMSA 1978, Section 31-20-4 to add new language at the end of the section providing that an order deferring or suspending a sentence applies to the entire judgment *unless otherwise prohibited by law*.

FISCAL IMPLICATIONS

SIGNIFICANT ISSUES

Section 1 of HB60 will limit prosecutorial and sentencing court discretion in recommending and imposing sentences.

In practical terms, HB60 imposes a statutory minimum sentence for all serious violent offenses. In doing so, it would limit a sentencing court's ability to impose probationary sentences if warranted by judicial discretion.

This legislation would place heightened duties upon the court to advise defendants entering into plea agreements of the statutory minimum otherwise resulting in appellate rejection of otherwise valid and appropriate plea agreements in cases where the sentencing court fails to adequately advise a defendant that if he or she pleads guilty to a serious violent offense the court would be required to impose a sentence of incarceration equaling at least 85% of the statutorily prescribed basic sentence. *See Marquez v. Hatch*, 2009-NMSC-040, ¶ 12, 146 N.M. 556 ("Without a full understanding of the likely direct sentencing consequences resulting from a plea, a defendant cannot truly make a voluntary, knowing, and intelligent decision to waive the right to a trial and its attendant protections.").

One unintended consequence of HB60 might be to actually *reduce* the time serious violent offenders spend incarcerated because, faced with mandatory minimum sentencing requirements,

sentencing courts may opt to run more sentences concurrently, rather than consecutively. Another unintended consequence of HB60 may be to alter the practice of most sentencing courts when they impose a deferred sentence. Typically, when a sentencing court defers a defendant's sentence, it defers the entire sentence, contingent on a defendant successfully completing a period of supervision. Sentences are rarely partially deferred, but they are often partially suspended.

The apparent intent of Section 2 of HB60 is to make a conforming amendment. However, the proposed language enacts a substantive change in New Mexico's sentencing law. Under current law, when a defendant is sentenced for multiple offenses, the resulting sentence is a single sentence and must be served completely. The amendment proposed in Section 2 of HB60 implies that the Legislature intends that sentences *could* be served and completed piece by piece. This conflicts with NMSA 1978, 31-18-15(C) (1889) ("Whenever any convict shall have been committed under several convictions with separate sentences, they shall be construed as one continuous sentence for the full length of all the sentences combined.")

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

It is unclear if this proposed legislation would conflict with Section 31-18-15.1, which allows a sentencing court to depart up to 1/3 of a basic sentence when finding mitigating circumstances surrounding the offense or concerning the offender.

TECHNICAL ISSUES

The words "a felony offense that is" contained in proposed Section 31-20-3(B) are unnecessary. All serious violent offenses, as defined in Section 33-2-34, are felony offenses.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS